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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,067	05/05/2004	Cary A. Jardin	10559/255002/P8904C	6651
20985	7590	05/26/2006	EXAMINER	
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			MIRZA, ADNAN M	
			ART UNIT	PAPER NUMBER
			2145	

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/840,067

Applicant(s)

JARDIN ET AL.

Examiner

Adnan M. Mirza

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/05/2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being unpatentable by Banga et al (U.S. 5,931,904).

As per claims 1,6,11 Banga disclosed a method of enhancing data delivery comprising: sending a first packet from a client interface to a remote terminal at a first time; receiving at the client interface a second packet from the remote terminal at a second time; determining a response time of the remote terminal at the client interface based on a time period between the first time and the second time (col. 3, lines 22-36); using said response time to determine information related to a connection speed between the remote terminal and the client interface; providing a plurality of different content versions, each is having a different amount of information, each content version being optimized for a specific connection speed (col. 3, lines 3-15); based on said determined connection speed, automatically selecting a content version from said plurality of content versions; and is providing the remote terminal with the selected content version (col. 5, lines 32-47).

As per claim 2 Banga disclosed further comprising determining a data flow rate from the determined response time of the remote terminal, and wherein the determining the response time comprises: starting a timer at the first time when the client interface sends the first packet to the remote terminal; and stopping the timer at the second time when the client interface receives the second acknowledgement packet from the remote terminal (col. 6, lines 53-66).

3. As per claims 3,13 Banga disclosed further comprising determining network congestion based on the determined response time (col. 4, lines 29-47).

4. As per claims 4,14 Banga disclosed further comprising determining the response time based on a timing of a handshake between the remote terminal and the client interface (col. , lines 58-67 & col. 2, lines 1-4).

5. As per claim 5 Banga disclosed wherein selecting the destination address from a plurality of addresses is based on a requested address by the remote terminal and the determined response time (col. 6, lines 53-66).

6. As per claim 7 Banga disclosed further comprising determining a data flow rate from the remote terminal based on the response time(col. 4, lines 29-47).

Art Unit: 2145

7. As per claim 8 Banga disclosed wherein the requested destination address includes a main destination address and a plurality of sub-addresses, each of said sub-addresses corresponding to a connection speed and optimized for a said connection speed (col. 2, lines 1-11).

8. As per claim 9 Banga disclosed further comprising determining a network congestion based on the determined response time (col. 4, lines 29-47).

9. As per claims 10,12 Banga disclosed further comprising connecting the remote terminal to the selected destination address (col. 5, lines 48-67).

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

11. The examiner can normally be reached on Monday to Friday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

Art Unit: 2145

supervisor, Jason Cardone can be reached on (571)-272-3933. The fax for this group is (703)-746-7239. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).



Adnan Mirza

Examiner



JASON CARDONE  
SUPERVISORY PATENT EXAMINER